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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/626,191	07/28/2000	Dirk M. Beyer	10001529-1	3159

22879 7590 02/23/2004

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EXAMINER

VAN DOREN, BETH

ART UNIT PAPER NUMBER

3623

DATE MAILED: 02/23/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/626,191

Applicant(s)

BEYER ET AL.

Examiner

Beth Van Doren

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MLW

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 03 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5, 8-10, 12-13, 15.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Susanna Diaz
Susanna Diaz
Primary Examiner
AU 3623

Advisory Action

This Advisory Action is in response to communications received on February 03, 2004.

Applicant has argued (1) Technology Strategy, Inc. (disclosed in reference A - screenshots of www.grossprofit.com, reference B - "Looking Back to Fashion's Future" by Ackerman, reference C - "Merchants Try Complex Math Tools to Improve Inventory Decisions" by Koloszyc) does not teach or suggest that Monte Carlo simulations use normalizing and averaging techniques as suggested by the examiner, and that (2) the normalizing and averaging as required in claim 1 is detrimental to the purpose of Monte Carlo simulation which is used to show all possible combinations of randomly generated variables and the Examiner is incorrect in stating that Monte Carlo simulation uses normalizing and averaging, (3) it is not obvious to normalize and average life-cycle demand profiles based on a prior art technology related to fashion products since fashion products have a known and predetermined life cycle, (4) there is no way to know what the graph represents as it has no axis labels and since the graph has multiple points it teaches away from a mid-point, and (5) the examiner does not address the "midpoint of the life-cycle of each similar product".

In response to arguments (1) and (2) of the Applicant, Examiner points out that Examiner did not state that Technology Strategy, Inc. taught that Monte Carlo simulations use normalizing and averaging techniques. Instead, Examiner asserted that Technology Strategy, Inc. taught using simulation, such as the Monte Carlo simulation, as well as mathematical manipulation in determining a demand profile for a new product and that it is old and well known that simulations, such as Monte Carlo simulations,

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normalize and average historical data to generate values for uncertain future situations. Therefore, Monte Carlo simulation is an example of, **and not a limitation of**, the simulation employed by the tool. See reference C, page 2, sections 6-8, which further discuss Monte Carlo simulation. Furthermore, it is known in the art that Monte Carlo simulations occur when Monte Carlo techniques are applied to simulation, which involves generating some random observations from the function under consideration and then using the average of the random observations to estimate a mean.

Examiner also stated that the prior art uses statistical technique and mathematical manipulation, along with the simulation, to normalize the historical data and to predict future situations. For example, Technology Strategy, Inc. discloses multivariate calculations in reference B, page 3, section 1. Examiner maintains her rejection.

In response to argument (3) of the Applicant, Examiner respectfully disagrees. Technology Strategy, Inc. is a tool that mathematically manages the inventory and sales of products, such as in fashion products. The tool first creates a pre-season plan for the product and then the plan is analyzed during the season using actual sales data to determine markdowns and reallocation of inventory. See at least reference A, page 1, page 3, sections 1-2, and page 4. In fact, the teaching of the prior art is mainly directed towards forecasting and inventory risk for fashion products since fashion products do not have a known and predetermined life cycle.

In response to argument (4) of the Applicant, Examiner first points out that she relied on Technology Strategy, Inc. to teach plotting points for the life cycle of a product during a season and determining the timing of when to perform markdowns using this plot. Technology Strategy, Inc. predicts the life-cycle demand of a new product by

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looking at historical data of similar products. The tool plots forecasts of future demands and uses this plot (with points) to determine the timing of markdowns during the season of the product based on the product's run-rate. The tool assesses the product's performance on specific dates by comparing actual performance to predicted performance on the graph. While the prior art does not provide a picture of the graph, the concept is discussed in at least reference A, page 4, section 3, reference B, page 2, section 4, and page 3, section 1, and reference C, page 1, sections 1 and 3, page 2, sections 1 and 6-8, and page 3, sections 2-5, which discusses forecasting the demand curve and the life cycle curves. Examiner points out that the definition of midpoint is a point of a line segment or curvilinear arc that divides it into two parts of the same length, a position midway between two extremes. Therefore, while Technology Strategy, Inc. does not specifically disclose that one of these dated check points is a midpoint, it would have been obvious to one of ordinary skill in the art at the time of the invention to determine a midpoint with an associated specific date for the product in order to more accurately reach the targeted goals of the season.

In response to argument (5) of the Applicant, Examiner respectfully disagrees and reasserts her response to argument (4). Furthermore, Examiner points out that the data for the similar products is construed as the data of the new product by the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lwd
bvd

February 17, 2004